

AMENDED IN SENATE MAY 16, 2011
AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 914

Introduced by Senator Leno

February 18, 2011

An act to add Section 1542.5 to the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

SB 914, as amended, Leno. Search warrants: portable electronic devices.

Existing law provides that a search warrant cannot be issued but upon probable cause supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and place to be searched. Existing case law authorizes arresting officers, without a warrant, to conduct a search incident to a lawful arrest, including to search the contents of a ~~cell phone~~ *cellular telephone* taken from a suspect during an arrest.

This bill would prohibit the search of information contained in a portable electronic device, as defined, by a law enforcement officer incident to a lawful custodial arrest except pursuant to a warrant issued by a duly authorized magistrate using established procedures. ~~Because the bill would impose additional duties on local law enforcement, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,~~

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The right of privacy is fundamental in a free and civilized
4 society.

5 (b) The number of Californians utilizing and carrying portable
6 electronic devices is growing at a rapidly increasing rate. These
7 devices are capable of and encourage the storing of an almost
8 limitless amount of personal and private information. Commonly
9 linked to the Internet, these devices are used to access personal
10 and business information and databases that reside in computers
11 and servers located anywhere in the world. Users of portable
12 electronic devices have a reasonable and justifiable expectation
13 of privacy in the information these devices contain and can access
14 through the Internet.

15 (c) The California Supreme Court, in *People v. Diaz*, ~~No.~~
16 ~~S166600~~ 51 Cal.4th 84 (2011), held that the information in these
17 devices may be subject to search incident to an arrest without a
18 warrant or other judicial supervision.

19 (d) The intrusion on the information privacy and freedom of
20 communication of any person arrested is of such enormity that it
21 must require arresting officers to obtain a warrant to search the
22 information contained in or accessed through an arrested's portable
23 electronic device, *such as a cellular telephone*.

24 (e) *It is the intent of the Legislature in enacting Section 1542.5*
25 *of the Penal Code to reject as a matter of California statutory law*
26 *the rule under the Fourth Amendment to the United States*
27 *Constitution announced by the California Supreme Court in People*
28 *v. Diaz. The Legislature finds that once in the exclusive control of*
29 *the police, cellular telephones do not ordinarily pose a threat to*
30 *officer safety. The Legislature declares that concerns about*
31 *destruction of evidence on a cellular telephone can ordinarily be*
32 *addressed through simple evidence preservation methods and*
33 *prompt application to a magistrate for a search warrant and,*

1 *therefore, do not justify a blanket exception to the warrant*
2 *requirement. Moreover, good forensic evidence practice supports*
3 *the use of search warrants to obtain information contained in a*
4 *cellular telephone seized incident to arrest. Except as otherwise*
5 *stated in this section, it is not the intent of the Legislature to curtail*
6 *law enforcement reliance on standard exceptions to the warrant*
7 *requirement.*

8 *(f) It is the intent of the Legislature, through the enactment of*
9 *Section 1542.5 of the Penal Code, to implement the provisions of*
10 *Sections 1 and 13 of Article I of the California Constitution.*

11 SEC. 2. Section 1542.5 is added to the Penal Code, to read:

12 1542.5. (a) The information contained in a portable electronic
13 device shall not be subject to search by a law enforcement officer
14 incident to a lawful custodial arrest except pursuant to a warrant
15 issued by a duly authorized magistrate using the procedures
16 established by this chapter.

17 (b) As used in this section, “portable electronic device” means
18 any portable device that is capable of creating, receiving, accessing,
19 or storing electronic data or communications.

20 ~~SEC. 3. If the Commission on State Mandates determines that~~
21 ~~this act contains costs mandated by the state, reimbursement to~~
22 ~~local agencies and school districts for those costs shall be made~~
23 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
24 ~~4 of Title 2 of the Government Code.~~